JUVENILE JUSTICE SEMINAR

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JUVENILE CASELAW UPDATE

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JUVENILE CASE LAW UPDATE

1. *In re Jessie T.*, 242 Ariz. 556 (App. 2017)

Police found a Facebook photo of Jessie holding a pellet gun in one hand and a black kitten by its tail in the other; they also saw photos of the subsequent mutilation of the same kitten. Jessie admitted that he shot the kitten and afterward took pictures of a friend disemboweling it. He was adjudicated delinquent for felony cruel mistreatment of an animal. On appeal, Division 1 found the State failed to present sufficient evidence to support the adjudication, but modified the adjudication to the lesser-included misdemeanor offense of inflicting unnecessary physical injury to an animal. The Court affirmed, holding:

- Under § 13-2910(A)(9), killing an animal does not constitute "cruel mistreatment" unless the killing causes protracted suffering.
- Inflicting unnecessary physical injury to an animal under § 13-2910(A)(3) is a lesser-included offense of cruel mistreatment of an animal under § 13-2910(A)(9).

Under the plain language of the statute, cruel mistreatment to animals requires proof of torture, serious physical injury, or killing with protracted suffering. The State's evidence and arguments focused on the theory that Jessie created a reasonable risk of death by shooting the cat with a pellet gun. But the juvenile court was unable to determine the effect of the pellet gunshot, and without evidence establishing the seriousness of the injury the State necessarily failed to prove an element of the offense. However, the Court held that regardless of the extent of the injury, Jessie may nonetheless be liable for the lesser-included offense of intentionally, knowingly, or recklessly inflicting unnecessary physical injury on an animal. The Court concluded that a trier of fact could reasonably infer that shooting the cat was unnecessary, because Jessie admitted he shot the cat for no reason other than it was "black" and a "stray." A trier of fact could also find that shooting the cat with a pellet gun necessarily caused some type of physical impairment.

The dissent would have found that Jessie was guilty of cruel mistreatment as an accomplice based on his actions in filming the evisceration of the kitten after he shot it; since the State did not prove the shot killed the kitten, it could be inferred that it was still alive; this clearly meets the requirements of torturing the cat, inflicting unnecessary serious physical injury or killing the cat in a manner that caused protracted suffering. Although the State did not allege accomplice liability or propose the theory that the kitten was killed in a manner that caused protracted suffering through the evisceration, the dissent noted there is no right to notice of how the State will prove liability and no requirement that charging documents allege an accomplice theory of liability.

(2) *In re J.A.*, 242 Ariz. 305 (App. 2017)

At the disposition of combined probation revocation and delinquency proceedings, the juvenile court continued the juvenile on JIPS and ordered him to complete a residential treatment program as a condition of probation. The court added that the probation department would have discretion whether or not to use the GPS monitor at any time during probation. The juvenile complained on appeal that the court erred by giving the probation department the discretion to decide whether he should be subject to GPS monitoring. Division 2 agreed and vacated that provision.

- The juvenile court may not delegate to the probation department its authority to decide whether or not to impose GPS monitoring as a term of probation.

Only the juvenile court has the authority to impose or modify terms of probation, whereas a probation officer has only the limited authority to impose regulations which are consistent with and necessary to the implementation of the conditions imposed by the court. Whether a juvenile requires the additional restraint and structure of an electronic monitor is the kind of probationary condition that requires the reflective discretion of a judge exercising independent judgment in determining the appropriate disposition. The Court noted this is implicit in § 8-341(D)(providing that the court may include electronic monitoring as a condition of mandatory probation for a repetitive felony offender) as well as A.R.S. § 8-352(E)(5)(providing that the court may place a juvenile on JIPS if he or she meets the various conditions listed in the statute as well as any other conditions imposed by the court, including electronic monitoring).

3. *In re R.E.*, 241 Ariz. 359 (App. 2017)

While walking to school through an alley, R.E., age 11, and two other boys threw "really big rocks" over a wall into the parking lot of an apartment complex, damaging two cars. R.E. told police that one of the other boys, age 8 or 9, was trying to hit a red car, but missed and hit a white car. R.E. did not think the rocks he threw hit any cars, except one rock might have hit the tire of the white car. R.E. was charged with criminal damage and argued at trial that three young boys throwing rocks over a wall did not amount to "recklessness." The juvenile court found him guilty, noting they were not only throwing rocks over a wall, but throwing them at cars. R.E. complained on appeal that the evidence was insufficient to support a finding of recklessness. Division 2 affirmed the adjudication but remanded for a new disposition because the juvenile court erred in finding that imposition of JIPS was mandatory.

- Throwing large rocks over a wall at specific targeted cars is a gross deviation from the conduct of a reasonable child age eleven, eight or nine such as to constitute recklessness and support an adjudication for criminal damage.

- JIPS is a mandatory disposition under A.R.S. § 8-314(D) only when the juvenile adjudicated as a repeat offender is 14 years of age or older; in all other circumstances, § 8-352(D) requires the court to set forth factual reasons for imposing JIPS.

Under § 13-105(10)(c), to show recklessness the State had to show that (1) the juvenile was aware of and consciously disregarded a substantial and unjustifiable risk

that throwing rocks might damage cars, and (2) the risk was of such a nature and degree that his disregard of it constituted gross deviation from the standard of conduct that a reasonable person would observe in the situation. Division 2 rejected R.E.'s reliance on *In re William G*., the infamous shopping cart case in which the COA held that a 15-year-old riding shopping carts through a parking lot did not amount to recklessness but only civil negligence, and found R.E.'s actions were not simply heedless or inadvertent, but reckless.

R.E.'s disposition was consolidated with a felony adjudication from another county, and since R.E., who was 13 at the time, was adjudicated a repeat felony offender, the court held that regular probation was not an option and JIPS was mandatory. However, § 8-341(D) applies only to juveniles 14 and older who are adjudicated as repeat felony offenders. In all other circumstances, under § 8-352(D), the court must set forth factual reasons for imposing JIPS. Since R.E. was 13, JIPS was not mandatory and COA remanded for a new disposition.

4. *In re J.U*., 241 Ariz. 156 (App. 2016)

J.U. and some friends called two schools threatening a terrorist attack, resulting in the evacuation and closure of the schools. After trial, the juvenile court found J.U. guilty of numerous offense, including 8 counts of false reporting under A.R.S. § 13-2907. The court awarded restitution to the police department for costs incurred in its emergency response and investigation of the offense, and for the mileage expenses of officers who attended court hearings. J.U. challenged the resulting restitution award. Division 2 affirmed all but the restitution award for the mileage expenses of officers traveling to court hearings.

- When a juvenile is adjudicated delinquent of false reporting, § 13-2907(B) permits the juvenile court to order restitution for law enforcement agency's investigative costs incurred after the emergency ceases to exist.

- Although a law enforcement agency may be a victim for purposes of restitution, restitution does not include costs incurred in performing routine functions; mileage paid for officers to travel to court hearings is part of the routine functioning of a law enforcement agency of having its officers testify in criminal proceedings in connection with the prosecution of a criminal offense, and thus are not compensable as restitution.

Division 2 held nothing in § 13-2907(B) limits the investigation costs to those incurred only while an emergency continues to exist; unlike § 13-603, the language of § 13-2907(B) expressly imposes liability for two specific kinds of readily identifiable expenses: those incurred from an agency's response to an emergency and those incurred investigating the false report that created the emergency.

The juvenile court concluded mileage is an out of pocket cost that qualifies as an economic loss under § 8-344(A). The Court held that a police department can be a victim for purposes of restitution under the general restitution statute, and expenses incurred by a victim to attend trial generally are considered an economic loss for purposes of general

restitution statutes. However, when determining what constitutes an economic loss when the victim is a governmental entity, the restitution laws do not encompass costs incurred by such entities that are performing their routine functions, regardless of whether those costs can be traced back to a criminal act. The Court concluded the mileage paid for the officers was not a cost beyond the normal costs of operation. The mileage was an expense incurred as part of the routine functioning of DPD, like any law enforcement agency, of having its officers testify in criminal proceedings in connection with the prosecution of a criminal offense.

5. *In re C.D.*, 240 Ariz. 239 (App. 2016)

C.D. was tried in juvenile court for felony shoplifting under A.R.S. § 13-1805(I). The State proved beyond a reasonable doubt that C.D. had committed the instant offense of shoplifting, and also provided certified copies of minute entries from two disposition hearings showing he had been adjudicated delinquent twice previously based on his having committed shoplifting 4 times. C.D. complained on appeal that the juvenile court erred in adjudicating him delinquent for felony shoplifting because the statute does not provide that prior shoplifting adjudications, as opposed to criminal convictions, may be used as predicate offenses for the felony classification. Division 2 affirmed.

- The felony shoplifting statute is a repetitive offender statute that applies to anyone who has *committed* two or more offenses within five years – whether convicted or not. Therefore, a juvenile may be adjudicated delinquent for felony shoplifting based on prior adjudications of delinquency for shoplifting.

The Court agreed the legislature did not expressly state that prior delinquency adjudications may serve as a basis for felony shoplifting, and that delinquency adjudications are not the same as "convictions." But the plain language of the statute provides that a person who commits shoplifting and has been convicted of 2 or more of the specified offenses within the past 5 years *or has committed two or more of such offenses within that period* is guilty of a class 4 felony. Thus, A.R.S. § 13-1805(I) is a repetitive offender statute that plainly applies to adults whose acts may have but did not necessarily result in convictions, as well as juveniles, regardless of whether their acts result in delinquency adjudications. Nor does the lack of conviction or adjudication of delinquency for the prior offense violate due process. The statute requires proof of additional elements; namely, proof that that the accused committed two or more of the qualifying offenses within the past 5 years. Here, the juvenile court required the State to prove those elements beyond a reasonable doubt, just as it did the primary shoplifting offense.